

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

FERRELL WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 7:07-CR-30

ORDER

This case is before the Court on Petitioner's Motion for Return of Property (Doc. 77) and Request for Default Judgment (Doc. 89). For the reasons discussed herein, the motions are denied.

In 2007, Petitioner was convicted of possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). As part of the investigation, a search warrant was executed at Petitioner's home. A Dell personal computer was seized, among other things.

Petitioner has now moved under Federal Rule of Criminal Procedure 41(g) for the return of the Dell computer. Under Rule 41(g), an individual whose property has been seized by the government may move the court for return of the property. Fed.R.Crim.P. 41(g). However, Rule 41(g) cannot be used to recover property that has been forfeited to the government in a civil forfeiture proceeding. United States v.

Eubanks, 169 F.3d 672, 674 (11th Cir. 1999); United States v. Watkins, 120 F.3d 254, 255 (11th Cir. 1997).

In response to Petitioner's motion, the government represented to the Court that the Dell computer was administratively forfeited by United States Customs and Border Protection in 2005. A declaration of administrative forfeiture has been placed on the record. (Doc. 88-1). According to the Eleventh Circuit, when the government, in its response to a Rule 41(g) motion, admits its position is that, by forfeiture, the movant has already permanently lost his right to the pertinent property - as is the case here - the government's judicial admission is enough to deprive the court of the authority to grant the Rule 41(g) motion. Watkins, 120 F.3d at 255.

Because the property has been forfeited to United States Customs, Petitioner cannot rely on Rule 41(g) for relief. The Motion for Return of Property (Doc. 77) is denied. Petitioner's Request for Default Judgment (Doc. 89) is also denied.

SO ORDERED, this the 13th day of April, 2012.

s/Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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